

WEXLER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PLASMA PHYSICS CORPORATION,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Action No.

CV 02 3463

**JURY TRIAL
DEMANDED**

COMPLAINT

Plaintiff, Plasma Physics Corporation ("Plasma Physics") for its complaint against defendant International Business Machines Corporation, alleges as follows:

JURISDICTION

1. This is an action for patent infringement under the laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on Sections 1338(a), 1391(b), 1391(c), and/or 1400(b) of Title 28, United States Code.

PARTIES

2. Plaintiff Plasma Physics is a New York corporation with its principal place of business at 40 Overlook Road, Locust Valley, New York 11560, within this judicial district.

3. Upon information and belief, defendant International Business Machines Corporation is a New York corporation with a place of business at New Orchard Road, Armonk, New York 10504.

THE PATENTS IN SUIT

4. United States Patent 4,226,897 (the "'897 patent"), entitled "Method of Forming Semiconducting Materials and Barriers," duly and legally issued to Plasma Physics on October 7, 1980, based on an application filed on December 5, 1977 by John H. Coleman. Plasma Physics is the owner of title to the '897 patent. Another company, Solar Physics Corporation ("Solar Physics") is the exclusive licensee of the '897 patent, and has the right to recover for past infringement thereof in all areas except: apparatus for performing plasma chemical vapor coating or plasma chemical vapor etching of disc-shaped wafers made of single crystal silicon, polycrystal silicon, single crystal III-V compounds or polycrystal III-V compounds; disc-shaped wafers made with such apparatus by plasma chemical vapor coating or plasma chemical vapor etching; and processes in combination with such apparatus (the "Excluded Subject Matter"). Plasma Physics has the right to recover for past infringement of the '897 patent in the areas of the Excluded Subject Matter.

5. United States Patent 5,470,784 (the "'784 patent"), entitled "Method of Forming Semiconducting Materials and Barriers Using A Multiple Chamber Arrangement," duly and legally issued to Plasma Physics on November 28, 1995, based on an application filed on September 23, 1992 by John H. Coleman. Solar Physics is the exclusive licensee of the '784 patent, and has the right to recover for past infringement thereof in all areas except the Excluded Subject Matter area. Plasma Physics is the owner of title to the '784 patent and has the right to recover for past infringement thereof in the areas of the Excluded Subject Matter.

6. United States Patent 6,245,648 (the "'648 patent"), entitled "Method of Forming Semiconductor Materials and Barriers," duly and legally issued to Plasma Physics on June 12, 2001, based on an application filed on May 18, 1995 by John H. Coleman. Solar Physics is the exclusive licensee of the '648 patent, and has the right to recover for past

infringement thereof in all areas except for the Excluded Subject Matter area. Plasma Physics is the owner of title to the '648 patent and has the right to recover for past infringement thereof in the areas of the Excluded Subject Matter.

CLAIMS FOR PATENT INFRINGEMENT

7. Upon information and belief, defendant International Business Machines Corporation has infringed one or more claims of the '897 patent in violation of 35 U.S.C. §§ 271 (a), (b) and/or (g) by making and/or importing into the United States or offering to sell, selling, and/or using within the United States semiconductor wafer products made by processes claimed in one or more claims of the '897 patent and/or by actively inducing infringement of one or more claims of the '897 patent.

8. Upon information and belief, defendant International Business Machines Corporation has infringed one or more claims of the '784 patent, and is continuing to infringe one or more claims of the '784 patent, in violation of 35 U.S.C. §§ 271 (a), (b) and/or (g) by making or importing into the United States or offering to sell, selling, and/or using within the United States semiconductor wafer products made by processes claimed in one or more claims of the '784 patent and/or by actively inducing infringement of one or more claims of the '784 patent.

9. Upon information and belief, defendant International Business Machines Corporation has infringed one or more claims of the '648 patent, and is continuing to infringe one or more claims of the '648 patent, in violation of 35 U.S.C. §§ 271 (a), (b) and/or (g) by making or importing into the United States or offering to sell, selling, and/or using within the United States semiconductor wafer products made by processes claimed in one or more claims of the '648 patent and/or by actively inducing infringement of one or more claims of the '648 patent.

10. Notice of infringement of the '897 patent has been given to International Business Machines Corporation.

11. Notice of infringement of the '784 patent has been given to International Business Machines Corporation.

12. Notice of infringement of the '648 patent has been given to International Business Machines Corporation.

13. Upon information and belief, International Business Machines Corporation's infringement of the '897 patent has been willful and deliberate.

14. Upon information and belief, International Business Machines Corporation's infringement of the '784 patent has been willful and deliberate.

15. Upon information and belief, International Business Machines Corporation's infringement of the '648 patent has been willful and deliberate.

WHEREFORE, plaintiff Plasma Physics Corporation prays for judgment and relief against defendants, including:

A. Adjudging each of the '897, '784, and '648 patents to be not invalid and to be enforceable;

B. Adjudging that defendant has infringed and induced infringement of said patents;

C. Permanently enjoining International Business Machines Corporation and its officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, its assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '784 patent;

D. Permanently enjoining International Business Machines Corporation and its officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, its assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '648 patent;

E. Adjudging that an accounting be had for damages caused by the defendant's infringement, together with pre-judgment and post-judgment interest;

F. Adjudging that defendant is a willful infringers and trebling the aforesaid damages pursuant to 35 U.S.C. § 284;

G. Adjudging that this case is an exceptional case and awarding Plasma Physics Corporation its costs, expenses and reasonable attorney's fees pursuant to 35 U.S.C. § 285; and

H. Such other and further relief as this Court may deem just and proper.

Trial by Jury is hereby demanded.

Respectfully submitted,

By: 

Dated: June 14, 2002

HERBERT F. SCHWARTZ (HS2599)
ROBERT C. MORGAN (RM0245)
PATRICIA A. MARTONE (PM2989)
ERIC R. HUBBARD (EH9798)
FISH & NEAVE
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

NORMAN H. BEAMER (NB2998)
FISH & NEAVE
525 University Avenue
Palo Alto, California 94301
(415) 617-4000

Attorneys for Plaintiff,
Plasma Physics Corporation